

REMARKS

After entry of this amendment, claims 1-21, and 24-75 will be pending for the Examiner's review and consideration. Claims 1, 7, and 18-21 have been amended. Claims 22 and 23 have been cancelled. Claims 24-75 have been added. No new matter has been added. Reconsideration and allowance of the present application in view of the above amendments and the following remarks is respectfully requested.

This amendment responds to the office action mailed October 2, 2003. In the office action the Examiner:

- objected to claims 8 through 11 as being dependent upon a rejected base claim, but allowable if rewritten in independent form;
- objected to the specification, and in particular rejected the title of the application for being non-descriptive;
- rejected claims 1-7 and 12-21 under 35 U.S.C. 103(a) as being unpatentable over Farris *et al.*;
- rejected claims 22 and 23 under 35 U.S.C. 103(a) as being unpatentable over Asher *et al.*;
- requested that the First Information Disclosure be resubmitted since the paper does not appear in the file.

First Information Disclosure Statement

In response to the Examiner's request, a copy of the First Information Disclosure Statement, originally filed on June 15, 2001, is being resubmitted under separate cover.

Amendment to the Specification

In response to the Examiner's request, the title of the application will be amended, if necessary, upon the allowance of claims.

Independent Claims 1 and 21

Claims 1-7 and 12-21 were rejected under 35 U.S.C. § 103(a) as being anticipated by Farries *et al.* for the reasons given on pages 2 through 7 of the Office Action.

Independent claim 1 has been amended to positively recite that the occipital plate includes, *inter alia*, a plurality of bone screw holes in the central portion, and a bushing;

wherein the holes are configured and dimensioned to receive the bushing. This amendment was made to clarify claim 1 by making explicit what was already implicit and should not have any estoppel effect as such. There is no disclosure, teaching, or suggestion in Farris *et al.* of an occipital plate having a plurality of bone screw holes and a bushing, wherein the bone screw holes are sized and configured to receive the bushing. Rather Farris *et al.* simply discloses a plurality of tapered bone screw holes for directly receiving a bone screw.

It is respectfully submitted that independent claim 1 is thus allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 1 is respectfully requested.

Claims 2-20 all ultimately depend from claim 1, and thus, it is respectfully submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 2 through 20 is therefore respectfully requested.

Independent claim 21 has been amended to recite an occipital plate comprising, *inter alia*, a pivotable clamp plate with a hole for receiving the post, wherein the plate includes an arcuate stepped-in portion adjacent the post and the clamp plate further includes an extension sized and configured to engage the arcuate stepped-in portion. There is no disclosure, teaching, or suggestion in Farris *et al.* of an occipital plate having a pivotable clamp plate, wherein the occipital plate has an arcuate stepped-in portion for mating with an extension protruding from the clamp plate.

It is respectfully submitted that independent claim 21 is thus allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 21 is respectfully requested.

Newly Added Dependent Claims 24-27, and 28-50

Dependent claims 24-27, and 28-50 have been added to further clarify the present invention. As claims 24-27 all ultimately depend from claim 1, it is respectfully submitted that claim 1 is allowable and thus claims 24-27 are likewise allowable. Furthermore, as claims 28-50 all ultimately depend from claim 21, it is respectfully submitted that claim 21 is allowable and thus claims 28-50 are likewise allowable.

Claims 22 and 23

Claims 22 and 23 were rejected under 35 U.S.C. 103(a) as being unpatentable over Asher *et al.*

As claims 22 and 23 have been cancelled without prejudice so that they may be pursued in a later application, if desired, this rejection is deemed moot. Withdrawal of this rejection is respectfully requested.

Newly Added Independent Claim 51

Newly added independent claim 51 recites an occipital plate comprising: a front side and a back side, a central portion, and at least one leg portion; at least one bone screw hole in the central portion; and at least one pivotable clamping portion disposed on the front side of the at least one leg portion; wherein the at least one leg portion includes a post hole and the at least one clamping portion includes a pivot member and a clamp plate; the pivot member being sized and configured to mate with the clamp plate and the post hole.

The Applicant would like to thank the Examiner for the indication of allowance of the subject matter disclosed in claim 8 if rewritten in independent form. The Applicant has added independent claim 51 which includes all limitations of allowable claim 8 except one, as per the Examiner's recommendation.

It should be noted that independent claim 51 does not include the limitation of intervening claim 2 that the central portion include an upper portion, a lower portion, and a grooved portion therebetween, the upper portion having one bone screw hole because, it is submitted, that such limitation is not required to distinguish over the prior art. Rather, this limitation remains in dependent claim 61.

It is respectfully submitted that newly added independent claim 51 is thus allowable over the cited prior art. Allowance of independent claim 51 is respectfully requested.

New Added Dependent Claims 52-75

Dependent claims 52-75 have been added to further clarify the present invention. As dependent claims 52-75 all ultimately depend from claim 51, it is respectfully submitted that claim 51 is allowable and that claims 52-75 are likewise allowable.

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In light of the above amendments and remarks, it is respectfully submitted that claims 1-21 and 24-75 are now in condition for allowance, and the Examiner is respectfully requested to reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney at 212-790-6348, if a telephone call could help resolve any remaining issues.

Date: January 5, 2004

Respectfully submitted,



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